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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91165519
Party	Plaintiff Corporacion Habanos, S.A.  Corporacion Habanos, S.A. Avenida 3ra, #2006, e/20 y 22Miramar Havana, CUBA
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD**

In the matter of Trademark Application  
Serial No. 78/363024  
Filed February 5, 2004  
For the mark HAVANA CLUB  
Published in the *Official Gazette* on December 14, 2004

CORPORACION HABANOS, S.A.,	)	
	)	
Opposer,	)	Opposition No. 91165519
	)	
v.	)	
	)	
ANNCAS, INC.,	)	
	)	
Applicant.	)	
	)	

**OPPOSER’S MOTION FOR LEAVE TO FILE BRIEF IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT IN EXCESS OF PAGE LIMITS**

Opposer Corporacion Habanos, S.A. (“Opposer”) hereby moves for leave to file its brief in support of its motion for summary, filed on August 4, 2006, in excess of the page limits, and in support thereof states as follows:

1. On August 4, 2006, Opposer filed its Motion for Summary Judgment and Points and Authorities in Support Thereof, in the above-captioned matter. The total length of the Motion and Brief was 43 pages. At that time, Opposer inadvertently failed to file a motion for leave to file a brief in excess of the page limits.

2. Opposer’s motion for summary judgment addressed to separate and unrelated matters, in essence two cases. First, Opposer moved for summary judgment on the claims it raised in its Notice of Opposition, opposing the registration of Applicant’s mark HAVANA CLUB for “cigars made from Cuban seed tobacco.” This part of the brief was approximately 30

pages. Second, Opposer moved for summary judgment on Applicant's counterclaim seeking to cancel Opposer's registered mark HABANOS UNICOS DESDE 1492 on grounds of abandonment. This part of the brief (including the Conclusion/signature block) was approximately 13 pages. There is no factual or legal overlap between the two matters.

3. Because the Examiner had initially refused registration to the Applicant under section 2(e)(3) for "cigars," and then reversed that decision with no explanation after amendment to "cigars made from Cuban seed tobacco," it was necessary for Opposer to address all four factors under section 2(e)(3), and also addressed its section 2(a) claim. In addition, because the use of the term "Cuban seed" to obtain registrations for cigar marks using "Havana"-type terms appears to be based on a serious misapprehension of the meaning of that term and its relation to Cuba, and because of the importance of the issue to Opposer, it was necessary for Opposer to explain at some length the terms "Havana" for cigars and "Cuban seed" tobacco. In addition, Opposer also moved for summary judgment on its fraud claim.

4. Applicant's counterclaim asserts that the failure of a Cuban national to use its mark in commerce due to the Cuban Assets Control Regulations constitutes abandonment of the mark. Such a claim seeks to undo almost 40 years of U.S. policy supporting the reciprocal protection of U.S. marks in Cuba, of which there are over 4,000 registrations, the uniform practice of the USPTO, and U.S. obligations under the Paris Convention and TRIPs. Further, if Applicant were to prevail on its counterclaim it would put at risk the numerous other marks that Opposer has registered at the USPTO. Thus, although Opposer believes that Applicant's counterclaim is in fact frivolous, it was essential that Opposer fully address this issue, including its potential ramifications.

5. In light of the above, the undersigned made a good faith effort to file as concise a brief as possible that would still adequately present the issues for the Board's consideration. The undersigned further apologizes for not filing this motion for leave to file a brief in excess of the page limits at the time it filed its summary judgment motion on August 4.

WHEREFORE, Opposer requests that its Motion for leave to file its brief in support of its motion for summary, filed on August 4, 2006, in excess of the page limits be granted.

Dated: New York, New York  
September 22, 2006

Respectfully submitted,

/David B. Goldstein/  
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### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was emailed to and was served on Applicant by mailing, postage prepaid, said copy on September 22, 2006 via U.S. Express Mail to:

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